

## AGREEMENT

by and between

**YMCA OF THE CHESAPEAKE, INC.  
AND  
TALBOT COUNTY, MARYLAND**

**Re: Shared use of space within the planned St. Michaels Family YMCA  
for a new Talbot County Senior Center use**

17th **THIS AGREEMENT** (“**Agreement**”) executed in duplicate, and made effective on this day of April, 2017, by and between the **YOUNG MEN’S CHRISTIAN ASSOCIATION OF THE CHESAPEAKE, INC.**, a Maryland non-stock corporation (“**YMCA**”), and **TALBOT COUNTY, MARYLAND**, a charter county and political subdivision of the State of Maryland (“**County**”).

**WHEREAS**, pursuant to a lease dated the 21<sup>st</sup> day of May 2015 by and between the YMCA and the Talbot County Board of Education (“**Lease**”), the YMCA has a leasehold interest as a tenant in and to a portion of the property known as 100 Seymour Avenue, St. Michaels, Talbot County, Maryland, which portion is shown and depicted as \_\_\_\_\_ (“**Premises**”) on the plan sheet titled \_\_\_\_\_, prepared by Lane Engineering, LLC, and dated \_\_\_\_\_ (“**Site Plan**”), which Site Plan is incorporated by reference herein and is attached hereto as Exhibit A; and

**WHEREAS**, during the calendar years of 2017 and 2018, the YMCA intends to construct a new building to house the St. Michaels Family YMCA (“**St. Michaels YMCA Facility**”) and various associated site improvements on the Premises, which building and site improvements are shown on the Site Plan; and

**WHEREAS**, the County desires to facilitate services for senior citizens in the St. Michaels region; and

**WHEREAS**, the YMCA has indicated a willingness to make available, on a non-exclusive basis, areas within the St. Michaels YMCA Facility to provide the County, and/or its designee, with adequate space to offer services and programming for senior citizens (“**Talbot County Senior Center Use**”); and

**WHEREAS**, the Talbot County Board of Education has adopted a Resolution approving the use of the St. Michaels YMCA Facility for use as a Talbot County Senior Center facility in accordance with Education Article § 7-108 (g), Md. Ann. Code; and,

**WHEREAS**, in exchange for the establishment and use of the Talbot County Senior Center Use within the St. Michaels YMCA Facility for the full duration of this Agreement, on a nonexclusive basis, the County has agreed to pursue certain grant opportunities (as set forth

below), and to contribute any and all awarded grant funds towards the construction of the St. Michaels YMCA Facility, subject to the terms and conditions of any specific grant award(s); and

**WHEREAS**, the YMCA and the County enter into this Agreement to memorialize their respective rights and obligations under the agreed upon arrangement.

**NOW, THEREFORE WITNESSETH**, that for and in consideration of the mutual premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the YMCA and the County do hereby agree as follows:

**I. TERM.** This Agreement shall be valid and binding during the term of the Lease, which extends through May 21, 2114, and as may be extended through renewal ("**Term**"). Upon the termination of the Lease, for any reason whatsoever, this Agreement shall also terminate and neither party shall have any further liability to the other hereunder.

**II. DESCRIPTION OF SHARED USE SPACE.** During the Term of this Agreement, and only for the purposes set forth herein, the County shall have the right to utilize, on a non-exclusive basis, a portion of the St. Michaels YMCA Facility and any other site improvements located on the Premises (all such areas hereinafter collectively referred to as the "**Shared Use Space**"). The YMCA reserves for itself the right to utilize the Shared Use Space at all times that do not unreasonably interfere with the County's use of the Shared Use Space to provide the Minimum Senior Center Requirements (as that term is defined below). The YMCA also reserves the right to authorize others to use the Shared Use Space so long as such use by others does not unreasonably interfere with the County's use of the Shared Use Space to provide the Minimum Senior Center Requirements (as that term is defined below).

**III. DESCRIPTION OF MINIMUM SENIOR CENTER REQUIREMENTS.** At a minimum, the County's use of the Shared Use Space shall be sufficient to allow for the provision of senior center programming that meets the following requirements:

1. Occurring no less than three (3) days per week;
2. Occurring for no less than six (6) hours per day; and
3. Occurring for no less than one hundred and fifty (150) days per calendar year.

In the event state or federal law changes these minimum requirements, the County and the YMCA shall work cooperatively together to determine if any change(s) to the arrangement set forth in this Agreement shall be required to maintain and/or to fulfill any award of grant funding received pursuant to Section V 1 and or V 2 of this Agreement, and if the parties determine that any change(s) shall be required for such purposes, then the County and the YMCA shall work cooperatively together to implement reasonable changes to the arrangement set forth in this Agreement that are determined to be necessary to maintain and/or fulfill such grant funding, and if made, those changes will be memorialized in writing, signed by both parties, and automatically incorporated by reference herein. The requirements listed above in Subparagraphs III. 1 – 3 shall be collectively referred to hereinafter as "**Minimum Senior**

**Center Requirements**". Notwithstanding anything to the contrary contained herein, if the County and/or Upper Shore Aging, Inc. shall be unsuccessful in securing the grant award described in Section V. 2. of this Agreement, then the County and the YMCA shall discard the Minimum Senior Center Requirements specified above and work cooperatively together to determine a reasonable arrangement for senior center use by the County of the Shared Use Space, taking into account the range of programs and activities typically available in senior centers, such as those referred to in Section VII. 3. of this Agreement (the "**Alternative Senior Center Requirements**"). Any such Alternative Senior Center Requirements shall be memorialized in writing, signed by both parties, and automatically incorporated by reference herein.

**IV. OBLIGATIONS OF THE YMCA.** During the Term of this Agreement, the YMCA shall:

1. Be solely responsible for the design and construction of the St. Michaels YMCA Facility, including the design and construction of the Shared Use Space;
2. Be solely responsible for the maintenance of the Shared Use Space, except for any maintenance or repairs required under Subparagraphs V. 6 or V. 7 of this Agreement;
3. Be solely responsible for furnishing and maintaining all fixtures required within the Shared Use Space that are reasonably necessary to satisfy the Minimum Senior Center Requirements or, if applicable, the Alternative Senior Center Requirements, except for any maintenance or repairs required under Subparagraph V. 7 of this Agreement;
4. Be solely responsible for all costs associated with supplying the Shared Use Space with the utility services that are reasonably necessary to satisfy the Minimum Senior Center Requirements or, if applicable, the Alternative Senior Center Requirements;
5. Maintain comprehensive general liability insurance covering all of its operations, activities, liabilities and obligations on the Premises, having limits of no less than One Million Dollars (\$1,000,000.00) per occurrence, and no less than Five Million Dollars (\$5,000,000.00) of additional umbrella coverage, and which lists the County as an additional insured party;
6. Construct, operate and maintain, and permit the County to use the St. Michaels YMCA Facility consistent with all applicable grant requirements, conditions, or obligations assumed by the County as a condition of any grant funding provided for construction of the St. Michaels YMCA Facility; and
7. Cooperate fully with the County to achieve the objectives of this Agreement.

**V. OBLIGATIONS OF THE COUNTY.** During the Term of this Agreement, the County shall:

1. Pursue, in good faith and to the best of its abilities, the following grant opportunities:

a. A FY 2018 Community Development Block Grant from the Maryland Department of Housing and Community Development, in an amount up to Eight Hundred Thousand Dollars (\$800,000.00), it being understood by the parties that the submittal deadline for this grant application is June 2017 (tentative), and the award date is July 2017 (tentative); and

b. A FY 2018 Program Open Space Grant from the Maryland Department of Natural Resources, in an amount sufficient to pay for at least ninety percent (90%) of the total cost of: (i) the resurfacing the three (3) existing tennis courts that are shown and depicted on the Site Plan as "EXISTING TENNIS COURTS TO REMAIN"; and (ii) the construction of the three (3) new tennis courts that are shown and depicted on the Site Plan as "RELOCATED TENNIS COURTS"; it being understood by the parties that the submittal deadline for this grant application is July 1, 2017 (tentative), and the award date is September 2017 (tentative);

2. Ensure that Upper Shore Aging, Inc. pursues, in good faith and to the best of its abilities, a FY 2019 Senior Center Capital Improvement Grant from the Maryland Department of Aging, in an amount of at least Eight Hundred Thousand Dollars (\$800,000.00), it being understood by the parties that the submittal deadline for this grant application is July 2017 (tentative), and the award date is June 2018 (tentative);

3. Ensure that the Town of St. Michaels pursues, in good faith and to the best of its abilities, a FY 2019 Community Parks and Playgrounds Grant from the Maryland Department of Natural Resources, in an amount sufficient to pay for at least one hundred percent (100%) of the total cost of: (i) the resurfacing the three (3) existing tennis courts that are shown and depicted on the Site Plan as "EXISTING TENNIS COURTS TO REMAIN"; and (ii) the construction of the three (3) new tennis courts that are shown and depicted on the Site Plan as "RELOCATED TENNIS COURTS"; it being understood by the parties that the submittal deadline for this grant application is August 2017 (tentative), and the award date is June 2018 (tentative); provided, however, the parties acknowledge and agree that if the County shall be awarded the grant described under Subparagraph V. 1. b. above, then the County's obligation under this Subparagraph V. 3. shall be fully discharged;

4. Promptly make available to the YMCA, and/or ensure that Upper Shore Aging, Inc. and/or the Town of St. Michaels promptly make available to the YMCA, subject to any applicable requirements or limitations of any specific grant award, all funds awarded from any and all of the sources listed above, for the purposes of offsetting the construction costs of the St. Michaels YMCA Facility;

5. Ensure at all times, that the Senior Center Use, its employees, agents and other invitees: (i) use the St. Michaels YMCA Facility and all improvements, furniture, fixtures and equipment located thereon, carefully and for only reasonable purposes; (ii) operate all programs and activities in a safe and lawful manner; and (iii) restore the Shared Use Space to a

neat and orderly condition within a reasonable time period following the cessation of any daily activities and/or programming;

6. Promptly repair, at its cost, any damage to the St. Michaels YMCA Facility caused by the negligence or the willful misconduct of its employees, agents or other invitees.

7. Ensure that all its employees, agents and other invitees follow all rules promulgated by the YMCA under the authority of Subparagraph VI. 5 of this Agreement;

8. Maintain comprehensive general liability insurance covering all of its operations, activities, liabilities and obligations on the Premises, having limits of no less than One Million Dollars (\$1,000,000.00) per occurrence, and no less than Five Million Dollars (\$5,000,000.00) of additional umbrella coverage, and which lists the YMCA as an additional insured party;

9. Perform, and comply strictly with all applicable grant requirements, including all requirements related to administration and reporting; and

10. Cooperate fully with the YMCA to achieve the objectives of this Agreement.

**VI. RIGHTS OF THE YMCA.** Notwithstanding anything to the contrary contained herein, during the Term of this Agreement, the YMCA shall have the following rights, which rights shall be in addition to and not in place of any other rights the YMCA may have under the Lease, and/or at law or in equity:

1. The right to require all persons entering the St. Michaels YMCA Facility to submit to and pass, to the satisfaction of the YMCA, in its sole and absolute discretion, a sex offender screening process for the purposes of maintaining a safe and secure environment;

2. The right to exclude from the St. Michaels YMCA Facility and/or the Premises, any individuals who loiter, cause damage or disturbance, or engage in any unsafe and/or illegal activity;

3. The right to make any changes to the St. Michaels YMCA Facility, and/or the Premises, at any time, and from time to time, without requiring the consent of the County, provided that the Minimum Senior Center Requirements or, if applicable, the Alternative Senior Center Requirements shall be maintained;

4. The right to, in the event of an emergency, take whatever actions are deemed reasonably necessary to protect persons or property;

5. The right at any time, and from time to time, promulgate reasonable rules to ensure safety, security and order within the St. Michaels YMCA Facility and the Premises; and

6. The right to determine which portion(s) of the Shared Use Space the County may use and when the County may use such, provided, however, that such space and schedule shall at all times be adequate to meet the Minimum Senior Center Requirements or, if applicable, the Alternative Senior Center Requirements. Notwithstanding the above, the YMCA shall work cooperatively with the County's service provider to accommodate reasonable preferences regarding schedule and space allocation for the Talbot County Senior Center Use.

**VII. RIGHTS OF THE COUNTY.** Notwithstanding anything to the contrary contained herein, during the Term of this Agreement, the County shall have the following rights, which rights shall be in addition to and not in place of any other rights the County may have at law or in equity:

1. Scheduled access to the Shared Use Space, during all normal business hours, for the purposes of providing programming and activities for the Talbot County Senior Center Use; and

2. The right to delegate its responsibilities for the operation of the Senior Center Use to a service provider of its choosing (e.g. Upper Shore Aging, Inc.); provided, however, that notwithstanding any such delegation that may be approved, the County shall remain fully responsible for its obligations under this Agreement.

3. YMCA shall collaborate with, and not unreasonably withhold consent from, the County's service provider in offering programs or activities generally offered or typically available in senior centers. The parties acknowledge that the County's service provider is expected to develop and offer senior center programming to include such things as congregate meals, social activities and events, exercise programs, health and well-being screening and programs, and educational and informational events, taking into consideration the evolving needs of the senior population over time.

**VIII. QUALIFIED RIGHTS OF THE COUNTY.** With the prior approval of the YMCA, which approval shall not be unreasonably withheld, conditioned or delayed, the County shall have the following rights:

1. The right to erect signage on the St. Michaels YMCA Facility;

2. The right to hold fundraising events or other special activities in the Shared Use Space; and

3. The right to partner with one or more vendors or other providers to offer special programming or activities for the Talbot County Senior Center Use.

**IX. OTHER PROVISIONS.**

1. **Binding on Successors.** This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective agents, successors and assigns.

2. **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be determined in accordance with Maryland law and in Maryland courts.

3. **Hold Harmless.** The Parties hereto agree to hold the other harmless to the maximum extent permitted by law.

4. **No Waiver of Immunity.** The Parties hereto expressly do not intend to waive charitable and/or governmental immunity.

5. **No Agency Created.** Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

6. **Notices.** All notices pursuant to this Agreement shall be addressed to:

If to the YMCA:

Young Men's Christian Association of the Chesapeake, Inc.  
Attention: Robbie Gill, CEO  
202 Peachblossom Road  
Easton, MD 21601  
E-mail: [rgill@ymcachesapeake.org](mailto:rgill@ymcachesapeake.org)

With a copy to:

Zach Smith, Esq.  
Armistead, Lee, Rust & Wright, P.A.  
114 Bay Street, Building C  
Easton, MD 21601  
E-mail: [zachsmith@alrwlaw.com](mailto:zachsmith@alrwlaw.com)

If to the County:

Talbot County, Maryland  
Attention: Andrew Hollis, County Manager  
11 N. Washington Street  
Easton, MD 21601  
E-mail: [ahollis@talbgov.org](mailto:ahollis@talbgov.org)

With a copy to:

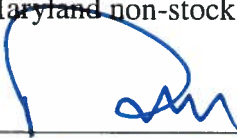
Anthony Kupersmith, Esq.  
Talbot County Office of Law  
11 N. Washington Street  
Easton, MD 21601  
E-mail: [akupersmith@talbgov.org](mailto:akupersmith@talbgov.org)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper and duly authorized officers.

ATTEST:

  
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YOUNG MEN'S CHRISTIAN  
ASSOCIATION OF THE CHESAPEAKE,  
INC.,  
a Maryland non-stock corporation

By:  (SEAL)  
Name: Richard J. Bodorff  
Its: Chairman - F Board

Date of Execution: 04/17/17

"YMCA"

ATTEST:

  
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TALBOT COUNTY, MARYLAND,  
a charter county and political subdivision of  
the State of Maryland

By:  (SEAL)  
Name: Jennifer Williams  
Its: President, Talbot County Council

Date of Execution: 4/13/2017

"County"